

APPROVED AMENDED MINUTES*
SUNNYVALE CITY COUNCIL MEETING
TUESDAY, OCTOBER 21, 2008

(Directly following this meeting, a Redevelopment Agency Meeting was held.)

6 P.M. SPECIAL COUNCIL MEETING – Boards and Commissions Interviews: Judi Miller – Board of Library Trustees and Robert Philbrook – Board of Library Trustees

7 P.M. COUNCIL MEETING

SALUTE TO THE FLAG

Mayor Spitaleri led the salute to the flag.

ROLL CALL

ALL PRESENT:

Mayor Anthony Spitaleri
Vice Mayor Melinda Hamilton
Councilmember John Howe
Councilmember Otto Lee
Councilmember Ron Swegles
Councilmember Christopher Moylan
Councilmember David Whittum

ABSENT:

None

STAFF PRESENT:

City Manager Amy Chan
Assistant City Manager Robert Walker
City Attorney David Kahn
Director of Community Development Hanson Hom
Director of Human Resources Erwin Young
Director of Public Works Marvin Rose
Director of Finance Mary Bradley
City Clerk Gail Borkowski

CLOSED SESSION REPORT FOR OCTOBER 14, 2008

Vice Mayor Hamilton reported Council met in closed session this evening pertaining to Section 54956.8 – Conference with Real Property Negotiator
Property: Sunnyvale Town Center
Negotiating Parties: Amy Chan, Agency Director: Peter Pau and Catherine Minor, Sunnyvale Mixed Use LLC
Under Negotiation: Amendment to Terms of ARDDOPA

Vice Mayor Hamilton reported direction was given, but no action was taken.

PUBLIC ANNOUNCEMENTS

Councilmember Whittum announced the continuous recruitment for boards and commissions. The boards and commissions informational meeting previously scheduled for October 30, 2008, has been rescheduled to Tuesday, November 11, 2008, at 6 pm. in the City Hall West Conference Room.

** Approved as Amended by Council on February 10, 2009*

Mayor Spitaleri announced the Howl'oween Pet Parade, October 26, 2008, in downtown Sunnyvale.

Councilmember Lee announced the unveiling of Sunnyvale's Department of Public Safety Memorial honoring all public safety officers who sacrificed their lives in the line of duty.

CONSENT CALENDAR

Councilmember Whittum pulled Item 1.C.

Vice Mayor Hamilton moved, and Councilmember Howe seconded, to approve the Consent Calendar with the exception of Item 1.C.

VOTE: 7-0

1.A. Approval of Information/Action Items – Council Directions to Staff

Fiscal Items

1.B. RTC 08–311 List of Claims and Bills Approved for Payment by the City Manager – List No. 423

Staff Recommendation: Council reviews the attached lists of bills.

Personnel Items

1.C. RTC 08–315 Revisions to Compensation for Classified Public Safety Sworn Management, Classified Confidential Management, Unclassified Confidential Management Appointed by the City Attorney, Unclassified Executive Management Classifications in Categories D/E, F, and K, and Classified Miscellaneous Confidential Classifications

Director of Human Resources, Erwin Young was present.

Councilmember Whittum stated the report's financial impact is unclear and requested staff's comments.

Director Young stated these items are included in the current budget and there is no specific budgetary impact over the existing adopted budget. Salaries and leave benefits include department directors, unrepresented managers in the City Attorney's Office, the unrepresented miscellaneous managers and other confidential managers. Annual salaries total around \$5 million dollars, and the annual cost impact is about \$270,000.

Public hearing opened at 7:11 p.m.

Mark Bowers, Treasurer of the Sunnyvale Managers Association, (SMA) stated that SMA opposes establishing this new category of "confidential managers" since all managers employed by the City are considered confidential. This proposal singles out a group of managers and pays them 3.5 percent above wages being negotiated by SMA for the same work level. SMA acknowledges compaction affects many managers but the report contains no supportive market survey data validating this notion.

Curtis Black, President of SMA, addressed compaction issues and provided specific comparisons between managers. Black stated the Hay Study alignments, as approved by Council, took into account issues such as confidentiality and established in the ranking for each position. The recommendation "permanent pay premium" is unsupported by the Hay Study and contrary to its conclusion. Implementing these pay increases could potentially instigate animosity between managers' groups.

Public hearing closed at 7:16 pm

Councilmember Howe requested clarification why this group is to be given the premium for confidentiality.

Director Young stated it pertains uniquely to employer/employee labor relations discussions. The Brown Act spells out the City's authority to designate certain people as confidential as it relates to employer-employee relations issues. This group has responsibilities in this one specific area of labor relations issues.

MOTION: Councilmember Howe moved, and Councilmember Swegles seconded, the motion to approve Alternative 1: including update of the compensation program for Classified Public Safety Sworn Management, Classified/Unclassified Confidential Management, and Unclassified Executive Management Classifications in Categories D/E, F, and K by implementing the salary increases in the attached salary schedules and an additional estimated 1.0 percent salary increase effective the pay period including July 1, 2008, to be implemented upon completion of the PSOA survey; approving a 3.5 percent confidential premium for Classified/Unclassified Confidential Management classifications; and approving the same compensation and benefits for Classified Miscellaneous Confidential classifications as received by SEA.

Councilmember Whittum expressed concern about compression of services and the lack of a revised revenue estimate. He stated Council should consider the fiscal impact before incurring additional obligations. He noted the city has a deficit of \$5 million, a car dealership has left Sunnyvale and retail sales are down. Councilmember Whittum added reports should include more information with specific salaries and present day salary information should be part of this discussion.

Councilmember Moylan questioned whether this confidentiality classification aspect of a job is already incorporated in the Hay analysis; and if anything is being counted twice.

City Manager Amy Chan confirmed that the Hay study did not take the levels of confidentiality responsibilities into consideration.

Councilmember Moylan stated that if done correctly, hopefully, there will be no dissention or resentment over these salary issues.

RESTATED MOTION: Councilmember Howe moved, and Councilmember Swegles seconded, to approve staff recommendation: Council approves all recommendations contained in this report, including update of the compensation program for Classified Public Safety Sworn Management, Classified/Unclassified Confidential Management, and Unclassified Executive Management Classifications in Categories D/E, F, and K by implementing the salary increases in the attached salary schedules and an additional estimated 1.0 percent salary increase effective the pay period including July 1, 2008, to be implemented upon completion of the PSOA survey; approving a 3.5% confidential premium for Classified/Unclassified Confidential Management classifications; and

approving the same compensation and benefits for Classified Miscellaneous Confidential classifications as received by SEA.

VOTE: 6-1 (Councilmember Whittum dissented)

STAFF RESPONSES TO PRIOR PUBLIC COMMENTS

None

PUBLIC COMMENTS

None

PUBLIC HEARINGS/GENERAL BUSINESS

2. RTC 08-314

2008-0637 — Downtown Sunnyvale Mixed Use, LLC. [Applicant/Owner]: Application located at 2502 Town Center Lane in the DSP-18 (Downtown Specific Plan Block 18) Zoning District. Related proposals:

General Plan/Specific Plan Amendments to Block 18 of the Downtown Specific Plan:

- Allow an increase in the number of stories from five to six (no height increase).
- Allow an increase in the allowed sign area and type.
- Associated amendments to the zoning code
- Special Development Permits:
 - Review of architecture for Block 6 (between Sunnyvale Ave, Washington, Murphy and McKinley avenues).
 - Modify condition of approval G11.d.3 to exclude designated outdoor dining from the 90,000 square foot restaurant limitation.
 - Modify condition of approval G11.d.2 to remove the 425-seat limitation for any one auditorium in the cinema.

Senior Project Planner Steve Lynch presented the staff report.

Councilmember Swegles questioned the overall seating capacity and the possibility of one large theater with several smaller theaters. Senior Planner Lynch confirmed that as a possibility, but the overall number of seats would not change.

Councilmember Swegles had a question regarding the restaurant square-footage allocation and whether leeway exists in reference to anchor stores, or is it being designated as space in the food court. Senior Planner Lynch confirmed the Food Court is exempt from the 90,000 square-foot restaurant cap, but deferred to the applicant regarding specific restaurant distribution.

Vice Mayor Hamilton requested an estimate of how theater seating would be allocated in individual theaters, and Senior Planner Lynch explained that basically it would create one large theater for blockbusters (600, 700 or 800-seat theater), and all other cinemas will vary in size. The mix is not certain at this point, and is driven by the theater industry, their current market and what they want. He stated the current total is 2,236 seats.

Councilmember Whittum wanted to confirm that the staff report states, excluding the outdoor dining does not affect the parking requirement.

Senior Planner Lynch confirmed the exclusion of outdoor dining does not affect the parking requirement and elaborated using the Urban Land Institute (ULI) numbers which focus on the 20 busiest days of the year; most of which are between Thanksgiving and New Years.

Councilmember Whittum questioned the precise formula dynamics driving the numbers. He cited one particular downtown business owner who cited using his patio about 80 percent – 90 percent of the time. Councilmember Whittum questioned how this owner's patrons will be accommodated. Senior Planner Lynch responded that with this level of parking there will be sufficient parking for outdoor dining.

Councilmember Whittum then inquired if Council is being asked to render an opinion on the aesthetics of the parking structure. Planning Officer Trudi Ryan confirmed a series of decisions were packaged for Council's consideration. Senior Planner Lynch did add that there is some staff level detail review coming, but in general this is how the garage will look.

Councilmember Whittum inquired whether luminous signs that could be a potential nuisance are subject to more administrative review. Senior Planner Lynch responded there are two more levels of review, with the greater level being the Master Sign Program, which is required to go back to the Planning Commission for review and approval.

Mayor Spitaleri invited the applicant to speak.

Jeff Warmoth, Sand Hill Property Company, wanted to clear up an issue regarding theater seating. He noted the current design does not include the larger theater. Currently it's the 13 theaters totaling approximately 2,400 seats.

Architect Ken Rodriguez explained that designers focused their maximum time on Block 6. The main component is located at the corner of Murphy and McKinley (historically, "Main-and-Main"). This is ground zero for the project (at both corners of Redwood Square plus Murphy and McKinley). This component's size and scale keep with the historical character of the Murphy Block, and this key component drove the design.

Councilmember Swegles inquired as to whether the anchor stores, Macy's and Target, are included as part of the 90,000 square-foot restaurant cap. Warmoth responded that neither Macy's nor Target currently has access to any of the 90,000 square-foot cap, but neither do they have any approvals for restaurants. Target already has approval for a snack bar, but that does not count against the cap.

Councilmember Swegles clarified that the approximate square footage for the 13 theater screens is approximately 2,200 square feet, and not the 2,400 square feet previously quoted by Warmoth. Warmoth concurred the steel has already been ordered per the construction drawings, and if that states 2,200 square feet, then that is correct. Warmoth also verified that current plans include a total of 13 screens with no large screens, (700 seats or more), in the initial development.

Warmoth addressed a concern that Councilman Swegles had and Warmoth clarified that anywhere there is retail space there can be a restaurant, throughout the project.

Councilmember Swegles asked if there are entrances or parking in the garage specifically for retailers located on Washington Avenue. Rodriguez confirmed there will be plenty of access right on the street. Rodriguez added that retail on Sunnyvale Avenue could have

entrances out to Washington Avenue or it could have doors onto Sunnyvale Avenue, depending on what the retailer wanted to do; but the retail wraps this entire corner as it does at McKinley and Sunnyvale avenues. Vice Mayor Hamilton expressed some concerns and wanted to revisit the theater issue and seating. Vice Mayor Hamilton asked, and Warmoth confirmed, that the largest theater will have 295 seats and the smaller theaters will average 191 seats.

Vice Mayor Hamilton also questioned the electronic changeable-copy boards. She asked where the signage will be located, and she expressed concern this signage could be annoying. Rodriguez replied the design team has not gotten into the design of the block yet and those issues are a big concern to the design group as well.

Councilmember Howe stated he's concerned about cinema impact on traffic. He stated the number of theaters and the number of seats in the theaters have a tremendous impact on traffic. He asked whether the overall traffic impact has been looked at for this request.

Planning Officer Ryan explained that in terms of traffic impact, if this were a free-standing theater and not part of a mixed-use project, the concern would be peak-hour trips in traffic; but because movie patrons are not exclusively using only the movie theaters – some patrons will be before and after – using other shops and restaurants in other facilities that are available as part of this mixed-use development. In consultation with the planning and traffic staff, they determined this would not have an effect on peak-hour traffic calculations. This is one of the reasons there is a cap on any one theater's size to minimize those kinds of impacts.

Councilmember Howe asked when speaking about the number of square feet for outdoor dining, is that in reference to Redwood Square and potentially out by the Plaza. Warmoth responded they hoped restaurants would be spread throughout the downtown, not just concentrated at Redwood Square. Clearly Redwood Square has the most opportunity because it's one acre in size and will be a major focal point.

Councilmember Howe asked staff if someone wanted outside dining, on the 100 block of Murphy Avenue, would it be necessary to apply for a Miscellaneous Plan Permit. Senior Planner Lynch answered, "yes," because the outside dining is in the public's right of way.

Councilmember Howe asked how it would be different in this project.

Senior Planner Lynch explained that some streets are public, some private. The perimeter like Mathilda Avenue, Washington Avenue and Sunnyvale Avenue, the outdoor dining there, would be subject to the same requirements for encroachment permits, insurance, etc., as Murphy Avenue. The interior area, such as Redwood Square, would not be required to get a permit other than a Miscellaneous Plan Permit.

Councilmember Howe asked if the Miscellaneous Plan Permit takes into account wheelchair accessibility. Senior Planner Lynch responded that wheelchair accessibility is taken into account and there is nowhere in the outdoor dining process that would exclude mobility. Councilmember Howe asked what percentage of the 90,000 square-foot restaurant cap would be allocated to outside dining. Warmoth responded roughly a little more than 10 percent.

Councilmember Howe inquired if other tenants, like Old Navy, for example, would be using the sidewalks as well? Warmoth responded, not on any regular basis and nothing that would provide any mobility issues.

Councilmember Howe asked what would the process be for an eating area in either Target or Macy's.

Planning Officer Ryan responded for other than a snack bar, a sit-down restaurant with a larger service than a snack bar would require a special development permit. That permit would be reviewed by the appropriate administrative hearing body with the size determining the appropriate level of review.

Councilmember Howe raised a question to the City Attorney. In the agreement with the developer, can we put the level of approval of additional restaurants at the Planning Commission or higher; or, have we stated it in the agreement already that it's going to be done administratively or whatever is normal.

City Attorney David Kahn commented the OREA does not specifically address what the approval process would be for an additional restaurant application for Macy's or Target. Small snack bars are allowed as a condition under the development permit. For a restaurant, it would go under the standard process. There would be an issue, to impose some other process; but certainly the intention is that any restaurant would go through the complete hearing process as required by the City. If the City were to establish a process for any restaurant of a certain size, that would apply to any restaurant, regardless of if it were in the project or not, and Macy's or Target would have to go through that same process.

Councilmember Howe asked Planning Officer Ryan, in regards to going from a snack bar to a restaurant; would that be an administrative hearing, a staff approval, and would it go before the Planning Commission or City Council? Planning Officer Ryan confirmed it would either be an administrative hearing or go before the Planning Commission. It would be a noticed public hearing, and it would really depend on the size.

Councilmember Whittum wanted some clarity on specific aesthetics of the garage; colors, landscaping etc. Rodriguez addressed this issue and went into detail about what the plan designs represent.

Councilmember Whittum asked about the four panels on the plan drawings and whether these were the same as the environmental graphics panels? Ken Rodriguez confirmed they were and would come back as a signage element and need to be approved through the Planning Commission.

Councilmember Whittum inquired about the process of possibly creating a fifth level. Rodriguez explained the fourth floor is over-designed so an additional level can be built with greater ease. Only the fourth level would have to be closed to pour the new level and the three remaining levels would still be available for parking.

Public hearing opened at 8:15 p.m.

Arthur Schwartz stated he was in favor of the increase in number of floors for the hotel from five floors to six as long as the building itself is not taller. He supported a restaurant and bar because he believed this will make for a more successful hotel operation and attract more people into Sunnyvale. In regards to item 6, he believes recessed windows make for a better design than flush windows. He did not think the sign needed to be increased.

Schwartz stated he is not necessarily opposed to illuminated signs, however, he is against ones that flash or move or have exploding graphics. He believes that flashing signs, or signs

with something going on, are very distracting to drivers and take their attention away from driving and are especially dangerous where there are a lot of pedestrians.

In reference to outdoor dining, Schwartz mentioned that he frequents a specific downtown restaurant and sits outside 100 percent of the time. But, if it's raining, he doesn't go because he doesn't want to sit inside.

Schwartz is disappointed the City has put a limitation on the developer in regards to theater size and numbers of seats. He was hoping there could be one larger theater that could be used as a concert hall because Sunnyvale currently does not have a concert venue that could serve 600 – 800 people.

Dr. Gary Gold noted there seems to be the City's perspective on parking, the developer's perspective on parking and the people on the ground's perspective. And, he is a person on the ground. He's involved with the Merchant's Association and wanted to reiterate that sometimes decisions are made and the results can be a real hardship on him and other merchants. Dr. Gold also stated that he doesn't have any particular stance on parking issues as they relate to tonight's meeting, however, he wanted it to be known that he thinks the City should always consider those opinions by those that will be affected most.

Vice Mayor Hamilton understood and expressed that if we do have unintended consequences, which undoubtedly happens, we do everything we can to try to mitigate and deal with them.

Joe Antuzzi, (Sunnyvale Downtown Association and Il Postale Restaurant), stated he mostly agreed with the developer except on a major point. His strong concern is based on competition. He stated originally while he was the Chairman of the Downtown Stakeholders Committee, they had a consultant come in and their report indicated the downtown could support 30,000 square feet of restaurant space with their infrastructure of parking and traffic etc.

Antuzzi went on to say that after the Forum Development Group looked at Santana Row, they determined the success of Santana Row was directly related to restaurants. Therefore, they requested Council increase the restaurant cap to 70,000 square feet, which Council did. Some members of Council, at the time, were afraid this might have an adverse affect on the small business owners on Murphy Avenue.

Antuzzi continued that when Sand Hill Property became involved, they were told by the City they were taking over the Forum's agreement verbatim. Then when the plans were revealed a few months later, the restaurant space had increased to 90,000 square feet. Antuzzi's frustration is now they're asking for an additional 13,000 or more square feet of outside dining that is not included in the 90,000 square feet. He thought the 90,000 square feet probably did not include the hotel, nor the food court, nor Macy's and Target.

Antuzzi said if they signed an agreement for 90,000 square feet, then they should keep to that agreement. Antuzzi said, according to the developers, outside dining is not utilized the same as indoor dining; it is not a function of the seats, it's a function of weather. He said after 13 years, at my restaurant, when it's full, it's not empty inside when it's full outside.

Councilmember Howe asked staff if the Food Court is included in the 90,000 square feet. Senior Planner Lynch responded it is not. Councilmember Howe asked if he knew the approximate size of the Food Court. Senior Planner Lynch stated no, but was able approximate a guess of 9,000 square feet.

Senior Planner Lynch added the difference is the measurement of the actual building square footage versus the open, outdoor dining area; a lot of those restaurants have outdoor dining only, so it's getting closer to the 12,000 to 15,000 square feet, including the buildings, and the outdoor dining for the whole second level of the food court area.

Councilmember Howe wanted to confirm the snack bar portion of Macy's or Target is not included in the 90,000 square feet. Senior Planner Lynch answered, that is correct. Target has their building permit showing a Pizza Hut and a Starbucks. Senior Planner Lynch pointed out these are not "destination" restaurants. You don't specifically drive there. You just pick up something as you're coming and going from Target, so, it is exempted from the 90,000 square-foot cap.

Councilmember Howe asked if Macy's and/or Target ask for a miscellaneous plan permit to put in a restaurant and it goes to at least the administrative hearing, would it then hit the 90,000 square-foot cap, assuming that the rest of this project is already built out? Senior Planner Lynch stated that it would not. Target and Macy's are not subject to that cap, but emphasized that if Macy's were to come through with a full restaurant, a Cheesecake Factory, or something like that, they would need to facilitate parking for the restaurant and that is a significant hurdle that they will need to cross.

Councilmember Howe asked what the parking requirements for Macy's are now, per square foot, versus a restaurant. Senior Planner Lynch stated that it's a very complex blended rate. Planning Officer Ryan went on to describe how this blended rate is determined.

Councilmember Howe posed if there were a free-standing building and it were a retail store like Macy's, how would parking requirements be defined. Planning Officer Ryan stated a retail use in downtown would be required to provide one parking space for every 250 square feet. There's not a specific rate for restaurants in downtown, but a restaurant elsewhere in the community, like fast-, it would range from one space for every 110 square feet to one space for every 75-square feet of building area.

Councilmember Whittum asked if he used the one for every 110 rule and there were 13,000 square feet of restaurant space, that sounds like 130 extra spaces; but zero is the extra number required in this particular case. Councilmember Whittum asked how many extra spaces would be on the fifth floor of the parking garage, if it is built. Planning Officer Ryan replied, up to 250.

Councilmember Whittum asked Antuzzi if his main objection is the parking for the outdoor dining. Antuzzi stated the main objection is the possibility of restaurant saturation. He's been here 13 years and he doesn't want to start over somewhere else, and he's sure his fellow merchants don't either.

Anne Dugan, regarding the exclusion of outdoor dining of the agreed upon 90,000 square feet, had two comments. One is that further exclusion would complicate our already impossible downtown parking situation, especially if the additional floor is not built within the parking lot. Dugan also stated that every possible parking allowance should be counted. If there's any way there could be a parking space needed, then we should make allowance for that parking space. Dugan said the parking envelope is continually being pushed, and having to be defended by those of us who are small business owners in Sunnyvale who, in addition are trying to survive in a hostile economy, in a torn-up downtown. We also have to keep an eagle eye out to avoid some previously agreed upon condition being changed yet again, and usually to our detriment. Once this project is complete, then adding parking will be impossible. It's only prudent to be careful to make sure the thousands of people we'll be

inviting into our new downtown have adequate and convenient parking, "convenient" being the operant word. This will ensure success just as assuredly as inadequate, inconvenient parking will assure failure.

Joel Wyrick, Executive. Director of the Downtown Association, said he represents all merchants here, and that includes Sand Hill Property. Wyrick stressed this should all be about the patron. Wyrick said he doesn't have any problems with the report, except for the parking and some cited information. In the report, Wyrick disagreed with the comparison to Valley Fair stating this project is a planned mixed-use project. He went on to say that a person goes to Valley Fair to shop and eating is ancillary. But, perhaps half the people go to Santana Row to dine.

Wyrick strongly disagreed that 13,000 square feet will not impact parking. He stated he had previously owned a restaurant, and once he began outdoor seating, he was serving far more people due to the increased capacity.

Councilmember Whittum asked if Wyrick would not object to the 13,000 exception, provided the fifth floor of the parking garage was required within the conditions of approval.

Wyrick stated that it's necessary to determine what would make our downtown the best it can be from the patron's standpoint; and that at a minimum, the garage must be done immediately.

Sean O'Keeffe stated he thought the 13,000 square feet should be included in the 90,000 square feet. He noted competition – when you take into account the number of condos being built, the number of Sunnyvale residents we already have and the number of people visiting downtown – the project is out of balance. It will be saturated with restaurants.

Maria Pan stated patrons who do not want to park in that parking structure should walk a block and use the Target parking structure. She suspected that people will not use the fifth-floor parking level at Macy's because citizens in general do not use the Target Parking structure when spaces are available. She recommended using the shuttle if people prefer not to walk. Councilmember Swegles stated, when the Sunnyvale Town Center is completed, parking will be at a premium.

Emad Ibrahim, owner of Dishdash Restaurant, stated he is concerned about the parking issue in favor of adding extra spaces in the fifth floor parking structure at Macy's. Ibrahim stated he is worried about the potential over-saturation of restaurants and an imbalance with not enough retail or contrasting type of venues.

Vice Mayor Hamilton stated that the overall project has a million square feet of retail; the 90,000 square feet of restaurant space is less than 10 percent of the total. Vice Mayor Hamilton planed to follow up with relevant statistics for Ibrahim.

Public hearing closed at 8:51 p.m.

Mayor Spitaleri invited the applicant to make closing comments.

Warmoth explained the history of the project and referenced the 300,000 square feet of office space that are well under construction. Additionally, there are 50,000 square feet of movie theaters, 1 million square feet of retail, and a 194-room hotel. Regarding preparatory parking studies, there were multiple internal parking studies completed, plus those done by

Macy's and Target. Feron-Pierce used the Urban Land Institute (ULI) Second Edition of Parking, to help identify that everything had adequate parking. With these ULI standards, the parking issues should be more than successful.

Warmoth described how, if Devcon pours the additional fifth floor it would require only about two weeks now, as compared to coming back later and working on it for several months to accomplish the same.

Councilmember Whittum questioned staff whether it is possible to make the conditional exceptions approval in providing the extra 130 spaces. Senior Planner Lynch stated that using more current numbers, the Feron-Pierce ULI might create an updated report leading to the conclusion that more parking is needed.

Councilmember Whittum questioned why Macy's thinks this is needed? Warmoth responded that it's not that Macy's doesn't agree, but considering their experience with their national network of stores, they base their comments on other remote Macy's branches with previous bad situations. This probably has nothing to do with our local Macy's Department Store. We're fully providing parking to Macy's standards.

Macy's doesn't use the Feron Pierce ULI Standards. They use their own standards, so dual sets of numbers, both Macy's and Feron Pierce, have to be kept to meet both minimums. And, as a reminder, both Macy's and Target had signature authority over everything within the six city blocks, including parking.

Vice Mayor Hamilton asked what percent of 90,000 square feet is rented out, and Warmoth stated he is not comfortable answering that question because it is proprietary information.

Vice Mayor Hamilton questioned whether Macy's request for extended parking may preface their expansion to include a Macy's restaurant. Warmoth stated that Macy's has worked with a third-party professional who would be required to interpret the need for more parking. Considering Macy's has signature authority over the entire project, Macy's could have demanded that we develop the fifth-floor parking level now, which they did not.

Councilmember Swegles asked Warmoth about the exclusionary parking standard being applied in Item 9 to exclude all designated outdoor dining from the 90,000 square feet.

Warmoth stated that in other projects, potential tenants want both the parking and their restaurant projects completed at the same time. When the project began, far more restaurants applied to rent their tenant spaces. If Sand Hill can fill 90,000 square feet for interior space, and can charge for it, and if the 13,000 square foot exterior seating counts against the 90,000 square foot cap, then there's a strong disincentive to bring in restaurateurs with exterior seating.

Vice Mayor Hamilton requested clarification of the last statement; are the 13,000 square feet included as part of the 90,000 square feet?

Peter Pau stated Sand Hill has interest from probably more than 90,000 square feet worth of tenants who are committed. It's likely these tenants would overlap and not be a good fit. For example, there could not be six different Chinese restaurants. Sand Hill is certainly not even close to the cap. Sand Hill has to make distribution throughout the project; not putting them all in one block or in one phase. The agreement with Macy's and Target is to spread the restaurants around. More review is in order.

Pau stated he thinks the City is going in the wrong direction regarding outdoor seating, and suggested Council listen to the Murphy Avenue merchants. Pau commented that it's important to have a mix of businesses because they draw off each other for customers. Right now there are a lot of choices, which is what makes it so successful. The number of restaurants on Murphy Avenue will compliment those within Town Center. One will benefit from the other because so many people will come here for dinner. That's what happened with Santana Row. Of all kinds of participants, Sand Hill is more worried about parking than anyone else. Macy's is set up to be the future trigger to define the need for the additional parking deck. If that need happens in the future, they would engage a third-party parking consultant and make the request. If the parking consultant stated extra parking is necessary, then we can build it, but right now they're not saying we need it. Pau stated that is why we're saying we don't want to build the fifth-floor deck today.

One member of the public indicated there are two periods of two hours each that are critical to their business. One is noon to 2 p.m., and the other is two hours in the evening.

Pau stated the dining times and other uses will peak at varying times, but overall, the parking will be adequate.

Councilmember Whittum stated that according to Sand Hill's expectations with the hotel, there will never be a need for a fifth floor; it's just there as a contingency for this agreement. Councilmember Whittum asked if that meant Sand Hill doesn't intend to start a conference center there at some point.

Pau stated he doesn't expect to ever have to build a fifth level. On the other hand, if they do, it's because the project has been extraordinarily successful, and in that case, they would be glad to put it up there voluntarily. Councilmember Howe asked if a restaurant like Il Postale is required to have a permit to operate its patio.

Senior Planner Lynch stated that a permit to occupy the patio is required.

Councilmember Howe asked if it is figured into the downtown parking requirements for the downtown parking, And Planning Officer Ryan stated she's not absolutely sure about that facility. The dining on the public street is not figured into the parking assessment. It is likely that the patio for this particular restaurant was not included in their parking assessment. Parking on Murphy Avenue was not included, but Planning Officer Ryan was not certain.

Councilmember Howe asked the same question about the Fire House.

Planning Officer Ryan stated that if they have outdoor activity, they require a separate permit. Planning Officer Ryan stated that outdoor dining on the public street – on Murphy Avenue – does require a miscellaneous plan permit, and it is not included in the parking assessment.

Councilmember Howe asked if there is a way to find out this evening whether that parking – like the patios, etc. that tend to be on the back of that building – tend to be on the parking assessment?

City Manager Amy Chan stated that this information is not immediately available, but staff can get back to Council with follow-up information.

Vice Mayor Hamilton asked if it is possible to make a motion on this and decide part of this tonight and then continue one part until next week.

City Attorney Kahn stated that once you have a public hearing and close the public hearing, then you would not have to re-open the public hearing. Council could continue it to a future date. City Attorney Kahn cautioned that next week – October 28 – is a very busy meeting, but certainly Council has the authority to act on all or portions of the application and could defer a portion to a future date re-open the public hearing, based on the hearing already conducted this evening.

City Attorney Kahn stated we have to determine if Town Center is within their assessment district. They are providing their own parking, so they're not exactly the same as those parking areas that are in our assessment. They provide their own parking as part of their overall plan.

Councilmember Swegles stated that Council needs to address that as a separate item or a study issue.

City Manager Chan stated the parking assessment rate has already been established by Council. City Manager Chan said Council will have the opportunity to re-assess this year, meaning Council could make the decision tonight and then, to be consistent, take that into consideration as part of next year's assessment process.

Councilmember Moylan stated that since they have a bunch of different items, he would like to split them up, with one motion to approve Alternatives 1 and 3 (to approve the two specific plan minimums and the ordinance, as per staff recommendations), and separate motions for the special permit developments.

MOTION #1: Councilmember Moylan moved, and Vice Mayor Hamilton seconded, to approve staff recommendation, Alternatives 1 and 3:

Council approves the following:

1. Specific Plan Amendment and Ordinances to allow an increase in the number of stories from five to six; and
3. Specific Plan Amendment and Ordinance to allow an increase in the allowed sign area and type; and modifies the last sentence of D.13 in Attachment C, page 4, to read: The signs may not be used by retailers as off-site signage or for advertising any products or stores.

Vice Mayor Hamilton made a friendly amendment to include language that prohibits the signs from being used by retailers as using off-site signage or for advertising any products or stores. Vice Mayor Hamilton state that at Valley Faire, there are big TV screens that flash obnoxious ads for all the stores around, and that as she understands it, in Sunnyvale, these signs are intended as directional signs, general downtown information, or information about seasonal events. She stated she does not have any objections to those uses.

Councilmember Moylan stated the requested friendly amendment sounds like it carries out the intention of the staff condition. Vice Mayor Hamilton stated that, as it is written, it sounds like future tenants could use those signs for advertising in the future, and Council should be able to cut that off.

Councilmember Moylan accepted the friendly amendment and observed there are ordinances that cover this.

City Clerk Borkowski asked Councilmember Moylan to re-state the motion.

Councilmember Moylan stated the motion as, Staff Alternatives 1 and 3 with the slight alteration to the final ordinance for 3 that the vice mayor suggested.

Councilmember Howe added that the ordinance specifically calls for the increase from five to six stories as being for the hotel, and clarified that information was included in motion.

Vice Mayor Hamilton also clarified that on Attachment C, Page 404, Paragraph D.13, the last sentence should read "The signs may not be used by retailers of off-site signage or for advertising any product or stores."

Councilmember Swegles stated that sentence will take care of a typo, changing "uses" to "used".

Vice Mayor Hamilton asked Councilmember Swegles if he had substituted "intended to be used?" Councilmember Swegles said he had. Planning Officer Ryan asked Vice Mayor Hamilton if she would also like to modify the ordinance language to be parallel, to which Vice Mayor Hamilton agreed.

VOTE: 7-0

Councilmember Moylan next moved Alternative 7, with a very slight change, requiring (rather than suggesting) using visual placeholders to mitigate the visual impact of the parking structure. Councilmember Howe seconded the motion.

MOTION #2: Councilmember Moylan moved, and Councilmember Howe seconded, to approve Alternative 7: Council approves the Special Development Permit for Block 6 architecture with modified findings and conditions of approval to include modified language under "addition to proposed parking structures elevations" to replace the word "should" with the word "shall" on page 10 of the staff report.

VOTE: 7-0

Vice Mayor Hamilton moved to go with Alternative 13, removing the special development permit limit of 425 seats on all but two cinemas. This would allow them to build two cinemas over 425 seats, but the remainder would have to be built below the 425 seats.

Councilman Howe seconded the motion.

Councilman Swegles stated he would not support the motion due to the fact there is a limitation already in place and that the current discussion regards how to implement the seating limitations. He suggested staying with the recommendation given by the Planning Commission.

Vice Mayor Hamilton stated that she thought the Planning Commission recommendation meant that they could take any restriction off at all. This way they could build within their 2,900-seat limitation and build one theater. Vice Mayor Hamilton stated she doesn't want to see three or four mega theaters, but would rather see more diversity, adding that offering two limited-size theaters would be a way to do it.

Councilmember Howe stated that if this passes, it could have positive effects on peak traffic by cutting it up into smaller theaters, instead of having just one or two at full capacity. Councilmember Howe added that the number of theaters and the total number of seats are what make the difference when it comes to impact. He stated that's what this motion does, while giving the developer a little more leeway in how the seating is done.

Planning Officer Ryan requested clarification from the maker of the motion. She stated the way the motion is phrased right now, there could be two theaters, since the motion says that two theaters could exceed the 425-seat limit.

Councilmember Howe explained that it wasn't his intent to cut down on the number of theaters, and that's the issue. Councilmember Howe stated he would vote against the current motion.

Councilmember Whittum asked if there is a concert, would there need to be a special permit to have a concert, or is that a new use? Senior Planner Lynch replied that live entertainment would require a permit.

Councilmember Whittum asked if they came to get a permit for live entertainment, does the City have a traffic analysis that could be interposed. Senior Planner Lynch said it would require another traffic study.

Councilmember Whittum stated he could imagine some big science conference and they decide to have their plenary session in a big theater, you could have people at the hotel and have a conference at this place. Would that require a special use permit? Senior Planner Lynch replied that the hotel does have some conference rooms.

Councilmember Whittum stated, no, they really wanted to use the larger capacity theater with 1,000 people.

Senior Planner Lynch explained further that if this happened on a regular basis, then we would eventually require a modification. Otherwise we could require our UET, our Special Event permits similar to Yahoo, for example, having a large conference on a temporary basis.

Councilmember Whittum asked what if – over time – we had traffic problems and we had no recourse.

Planning Officer Ryan stated she would hesitate to say “have no recourse” when all over town we have the situations that change behavior and patterns. Other factors happen that complicate and modify our behavior, so through the City's authority we can always examine and look for other ways to do things, including rerouting traffic. Certainly working with businesses on a voluntary nature to make modifications and adjustments, we have those options available to us.

Director of Community Development Hanson Hom stated there is a requirement in this project that requires a traffic demand management (TDM) plan from the developer which will be developed in the future, and issues such as those mentioned could be addressed in the TDM plan. The condition requires staff approval.

Senior Planner Lynch added that the problem is the “perception” of no parking, which is equally as critical as actually having no parking in the downtown area. So if this project evolved and it is successful three years downstream, and there are future parking problems, we could deal with them then.

Councilmember Whittum opposes the motion because recognizes the traffic issues; they are valid, but he prefers to leave them with the flexibility and actually take the staff recommendation.

City Clerk Borkowski repeated the motion to approve Alternative 13 under Special Development Permit Number of cinema seats, with a modification to include two cinemas up to 800 seats each, and the remaining cinemas would be capped at 425 seats each, with no limit to the numbers of cinemas.

VOTE: 3-4 (Councilmembers Howe, Swegles, Whittum and Mayor Spitaleri dissented)
MOTION FAILED.

MOTION #3: Vice Mayor Hamilton moved, and Councilmember Howe seconded, to approve Alternative 13, modified to read: approve Special Development Permit to modify condition of approval G11.d.2 with two cinemas can have up to 800 seats each and the remaining cinemas are capped at 425 seats each with no limit on the number of cinemas.

VOTE: 3-4 (Mayor Spitaleri and Councilmembers Howe, Swegles and Whittum dissented)
MOTION FAILED.

Councilmember Howe moved, and Councilmember Swegles seconded, to approve the staff recommendation.

VOTE: 5-2 (Councilmember Moylan and Vice Mayor Hamilton dissented)

MOTION #4: Councilmember Howe moved, and Councilmember Lee seconded, to approve Alternative 12: Council approves the Special Development Permit to modify condition of approval G11.d.2 to remove the 425 seat limitation for any one auditorium in the cinema with the attached findings; and includes G11.d Permitted Uses: Cinemas multiplex of up to 60,000 square feet and 2,950 seats.

VOTE: 5-2 (Vice Mayor Hamilton and Councilmember Howe dissented)

Vice Mayor Hamilton re-clarified the motion.

MOTION: Mayor Spitaleri requested Council re-consider the motion.

VOTE: 4-3 (Mayor Spitaleri and Councilmembers Howe and Swegles dissented).

MOTION #5: Councilmember Lee moved, and Councilmember Howe seconded, to reconsider the previous motion.

VOTE: 4-3 (Howe, Swegles and Mayor Spitaleri dissented)

Councilman Lee stated he will move through #12 and also add the earlier-mentioned intent, thereby having to affect G11B2 to state cinema multiplexing of up to 60,000 square feet and 2,950 seats, maximum of 425 seats for any other auditorium.

City Attorney Kahn re-stated it as a cinema multiplex of up to 60,000 square feet with a maximum of up to 2,950 seats with a maximum of 425 seats for all but one single auditorium. Councilmember Lee agreed.

Councilmember Howe seconded the motion.

Vice Mayor Hamilton clarified they were talking about Alternative #12. The modifications they gave actually means it's #13. She offered a friendly amendment to limit the larger auditorium to 800 seats and have the other auditoriums have 425 seats.

Councilmember Lee did not accept the friendly amendment.

Councilmember Whittum asked the City Clerk to re-read the motion.

City Clerk Borkowski stated the motion is to approve G11-D for permitted uses of cinema multiplex of up to 60,000 square feet and 2,950 seats, with a maximum of 425 seats for all but one single auditorium. She also clarified they were not considering Alternative #12, because it is different. This is G-11D.

MOTION: 5-2 (Mayor Spitaleri and Vice Mayor Hamilton dissented).

MOTION #6: Councilmember Lee moved, and Councilmember Howe seconded, to approve G11.d, modified to read: Cinema multiplex of up to 60,000 square feet and 2,950 seats, with a maximum of 425 seats for all but one single auditorium.

VOTE: 5-2 (Mayor Spitaleri and Vice Mayor Hamilton dissented)

Councilmember Moylan moved, and Councilmember Whittum attempted to second, the approval of Staff Alternative #11 but was too late in doing so. Deny the special development permit to exclude outdoor dining from the 90,000 square feet previously approved for a restaurant.

Mayor Spitaleri stated that due to Councilmember Whittum seconding the motion late, there needed to be a new motion.

MOTION: Councilmember Swegles moved, and Councilmember Howe seconded, to approve the Planning Commission's Recommendation #9.
Councilmember Ron Swegles said heard both the merchants and the developer, and he agreed with the developer that the mix won't kill it, it will enhance it.

Councilmember Whittum offered a friendly amendment to require additional parking in the amount of up to 130 spaces for 13,000 additional square feet. Councilmember Moylan stated that the merchants have been hurting throughout this period and Council should keep it at the original 90,000 square feet and support the merchants. He cited Stoddard's going out of business; therefore, he cannot support the increase.

Councilmember Swegles stated that it was not the lack of business but the lack of management that caused Stoddard's to go out of business.

Vice Mayor Hamilton stated the merchants have truly been hurting and she realizes people go to Valley Fair for the shopping and Santana Row for the food. She stated that having a lot of restaurants will create a mix that will benefit everybody and help make the project successful.

Councilmember Lee stated he enjoys the old restaurants and ultimately hopes the competition will bring in far more people with more choices.

Mayor Spitaleri stated the trend in this country is combining outside dining with inside dining and this makes it successful. What's most important is its success. It's a mix like 50 – 60 years ago, it's critically important for its vibrancy.

VOTE: 5-2 (Councilmembers Moylan and Whittum dissented).

MOTION #7: Councilmember Swegles moved, and Councilmember Howe seconded, to approve Alternative 9: Council approves the Special Development Permit to modify condition of approval G11.d.3 to exclude all designated outdoor dining from the 90,000 square foot restaurant limitations with the attached findings.

VOTE: 5-2 (Whittum and Moylan dissented)

(5-minute break)

Mayor Spitaleri called the meeting back to order and stated that before the meeting continued, Council needed to review the ordinance and the nine different motions.

Vice Mayor Hamilton read Ordinance RTC 08-314. An Ordinance of the City Council of the City of Sunnyvale amending Section 19.28.090 of Chapter 19.28 downtown specific plan district, Table 28.090 of Chapter 28, downtown, a specific plan district, lot area, building height and lot coverage and Section 19.28.130 sign of Chapter 28, downtown specific plan district of Title Zoning of the Sunnyvale Municipal Code related to height and signs with any modification designated by Council on the previous motion.

3. RTC 08–316 Clean-Air Vehicle Sales Tax Rebate [Study Issue]

Senior Management Analyst Pete Gonda presented the staff report.

Staff Recommendation: Council decides against further study or implementation of a sales tax rebate program for clean-air vehicles.

Senior Management Analyst Gonda stated the item looks into the viability of providing rebates to purchasers of clean-air vehicles from car dealers in Sunnyvale. The idea of a sales tax rebate was one of the potential clean-green options to consider that came from Council's 2007 study session on sustainable Sunnyvale. The concept of providing such an incentive to consumers to purchase clean-air vehicles has certain merits. Supporting sales tax for clean air vehicles would move towards sustainability and a greener lifestyle, improve the quality of life and decrease dependence on fossil fuel.

Such incentives would also provide support to local auto dealers. However, Council must also consider a number of other factors. The City's fiscal sub-element stated that taxes levied by the City will be used for financing services performed for the common benefit. The sales tax rebate program benefiting a small number of consumers would not support this policy. Loss of sales tax revenue would be substantial, and would have a significant impact on the City's General Fund financial plan and the ability to provide basic services to the community.

Other concerns include complexity and cost of the administration of the sales rebate program: who would receive the rebate, what types of clean air vehicles would be included and who would administer the program and at what cost?

In light of these concerns, staff recommends Council approve Alternatives #3 to reject the concept of a sales rebate for clean-air vehicles. The benefits gained from the tax rebate program would not be worth the cost to the City's revenue stream and resulting impacts on City services.

Councilmember Lee stated that regarding a sales tax rebate, the City only pays one-quarter percent, and the City only gets a small portion, which is one percent. So when we're talking about a sales tax rebate, all we're focused on is only the 1 percent, not the whole 8¼ percent.

Staff commented that was correct.

Public hearing opened at 10:29 p.m.

Jim Griffith commented on an e-mail from Barbara Fukamoto stating that Sunnyvale Cool Cities supports the findings and recommendation of staff on this issue. It was the unanimous opinion of those people who voiced their opinion on this that since the marketplace for vehicles has changed so much in recent years; this is more of a perk for people who have already decided to buy such a vehicle, rather than an incentive to encourage people who were on the fence.

Griffith said that in the current economic situation, the City cannot afford that kind of a perk; instead there are other alternatives that might have no additional budget impact. For instance, the City of San Francisco pursued and received a grant from AAA which funded the design and printing of a pamphlet that told residents about all the various state and federal incentives which were available for people who purchased clean-air vehicles, which pretty much served the same purpose as a grant from the city itself. In that regard, he thought the City might be better off waiting for the sustainability coordinator position to be filled and then we could develop a broader and more budget-neutral approach to these issues.

Public hearing closed at 10:31 p.m.

MOTION: Councilmember Howe moved, and Vice Mayor Hamilton seconded, the staff recommendation that Council reject the sales tax rebate for the clean air vehicles.

Councilmember Moylan stated that should staff ever want to reinitiate efforts along these lines, one thing they could have is to have free parking reserved for certain types of vehicles. That would be a way to produce far more incentive than a rebate.

Councilmember Howe stated everybody's in agreement: staff, Cool Cities, and, hopefully Council.

VOTE: 7-0

4. RTC 08-317 Adoption of Shopping Cart Regulating Ordinance

Field Services Superintendent Jim Craig presented the staff report.

Staff Recommendation: Council adopts proposed Shopping Cart Containment Ordinance and proposed citation authority Ordinance; Council establishes a priority ranking for the new service and directs staff to establish a fee to recover the cost of the Neighborhood Preservation inspection activities in the FY 2009/10 Fee Schedule; with direction to staff to return to Council with an information item within two years of implementation providing feedback on how the program is working.

Field Services Superintendent Craig stated this item has to do with two ordinances. One describes requirements with regards to the regulation of maintaining and keeping shopping

carts off the streets. The second one provides a certain level of delegated authority to both Neighborhood Preservation and the Department of Public Works in order to provide some level of enforcement. This is related to a study that was done in May 2006. The intent with the shopping cart ordinances is to work with business and try to keep shopping carts from leaving the premises, keeping them off the streets.

Vice Mayor Hamilton stated the report doesn't mention whether any stores were contacted to discuss what they're currently doing about the problem.

Field Services Superintendent Craig stated they worked with businesses a couple years ago, but currently there's not much doing. There are a couple of companies that pick up shopping carts, but in regards to keeping them on businesses premises, there's not much being done.

Vice Mayor Hamilton asked whether anyone had floated that idea past them to see what they thought of it. Was there any discussion with them, short of an ordinance, or is the only way we're going to get anything to happen.

Field Services Superintendent Craig stated that when the City asked about it a couple years ago, there was little interest in it at that time. The ordinance is designed so long as they control the carts, it has very little impact on them.

Once the cart loss gets beyond a certain level, there are certain requirements they have to meet; but as long as they can keep the carts on site, it's not an issue.

Director of Public Works Marvin Rose interjected that two years ago, when staff brought this to Council, businesses were aware we were looking at ordinances, and there wasn't a lot of interest there. Director Rose said it was the same kind of lack of interest the City was having in getting them to take care of their carts. He stated the City has not yet gotten their attention, and staff is hoping this will get their attention.

Director Rose continued on to say that what had changed in the two years was that the City got good information from other cities that had tried different things that didn't work. This suggestion deals strictly with those who violate the ordinance and violate the number of carts on the roadway. Director Rose said those are the problem, and staff believes that's a much more corrective way to deal with it than just blanketing the whole industry with the plan requirements. This way the City will target the people who are violating the plan.

Vice Mayor Hamilton asked how many stores are gross violators for this plan?

Field Services Superintendent Craig stated that five or six stores are gross violators of the plan, but of those, one of them is a company that has five stores in the City.

Mayor Spitaleri asked if the City has gone back to the businesses, saying that due to a lack of interest, the City is contemplating passing this ordinance. Mayor Spitaleri stated his opinion that the violators are the customers, not the stores, and there is nothing in here to address our citizens who are illegally removing property from somebody else's property. There's nothing to put responsibility back on our citizens. Mayor Spitaleri commented that the City does that with Neighborhood Preservation; if there are problems with them not cleaning their lawns, we give them a warning, then a citation and eventually we may fine them. But in this case, the City is saying it's the stores' fault that the citizens take something from someone else's property, and no responsibility is put on the citizens. Mayor Spitaleri

asked if there is a way to go back to the company and balance this responsibility on both parties.

Director Rose stated that the City will only deal with continual violators. That is, those that have more than five carts that have to be picked up in the neighborhood. This tends to be some of the larger stores. If they bring them in line, then it's a non-issue. Director Rose stated staff would like to get them to come in and work with the City, but that previous informal attempts have been unsuccessful. Director Rose pointed out that the last time Council considered this, they directed staff to come back with the ordinance.

Mayor Spitaleri stated he didn't see any feedback from businesses, and wasn't sure that an effort had been made to go out and meet with them again.

He then stated he would like staff to have one more shot at them, trying to get them involved in resolving this problem.

Director Rose responded that the City has the ability under state law to deal with the issue of removing a cart from private premises if it's not with the approval of the store owners. Staff found no public agencies using that state law because they think it's very problematic in who they're targeting and it's difficult to get the company owners to go after their customers as well. Director Rose said the law seems problematic and not a good answer to the problem. But it is there and the City could enforce it. It then becomes a Department of Public Safety issue, because it's a penal code violation and so public safety officers are going to have to deal with it, which would affect their workloads.

Mayor Spitaleri stated that if the City had an ordinance that stated that if ticketing someone \$50 for walking down the street with a shopping cart is no different than when police officers enforce the seatbelt rule, or the cell-phone issue. It's when they spot them, they take care of it. They don't actively check every car to see whether your seat belt is on.

Mayor Spitaleri expressed his frustration that there's no responsibility of putting this on our citizens to not take those carts out of those areas. Stores have locks on them, and they still disappear off lots.

Councilmember Swegles addressed the city attorney regarding the points brought up by the mayor, asking if Council could add on to the penalty for the persons caught with the cart.

City Attorney Kahn stated the taking of a cart from a store is already covered by the California Penal Code. That would be theft of property from a store. City Attorney Kahn stated the matter would probably require some additional research and review, and probably consultation with other jurisdictions that have tried that. But it would certainly be possible pass a local ordinance which could restrict and make it a crime subject to a penalty for taking a shopping cart off premises.

Councilmember Swegles stated he'd like to make it a state law and use his information as a reference. He asked the mayor if that's okay, the attorney could pursue that.

Councilmember Whittum asked how that fee is implemented under Alternative #2. Director Rose stated that Staff Recommendation Alternative #2, would establish a fee based on how much it's costing the City to deal with the problem; the report ends up being around \$100 to do the enforcement. This recovers City costs for enforcement. We would want a six-month time-span to announce the new program. That means it would kick in around 2009.

Councilmember Whittum asked if the City could hypothetically institute a shopping cart impact fee, proportional to use of the carts.

Director Rose stated that at the planning approval stage there is very little in the way of an existing code.

Councilmember Whittum asked whether other municipalities are already doing this. Director Rose stated some do this within their zoning code.

Councilmember Whittum questioned, if for tonight's action we looked at Alternative 2, could we add a line for the investigation of such planning approval fees or is that a separate study issue. Director Rose stated that it would be a zoning amendment to the zoning code.

Councilmember Whittum stated there would be some budget impact.

Public hearing opened at 10:47 p.m.

Tara Martin-Milius stated the carts are a challenge in her area. Enforcement based on complaint forces them to call the stores, etc. Rather than punishing the people who provide the service of the cart, why not consider the misuse by the customer who actually caused the problem. Why not create an incentive system that rewards people who bring back their carts. For example, let them pay a dollar to get a cart, then, receive their dollar back when returning the cart. People would line up to assist the bring-back routine just to get the dollar.

Public hearing closed at 10:50 p.m.

MOTION: Councilmember Whittum moved Staff Alternative 2. Councilmember Howe seconded the motion and provides a friendly amendment stating they revisit it in two years to see what changes need to be made.

Councilmember Lee asked about participation of the public safety officers implementing the system.

Councilmember Whittum pointed out the public safety officers are busy doing much more urgent work and do not have time to implement the shopping cart system. This item has been in process for two years. Councilmember Whittum suggested coming back with a friendly amendment to re-visit this in another couple years. This topic of shopping carts has had the heaviest feedback and complaints of any topic Council has ever discussed, and that Council should stick with this Alternative 2 as amended.

Councilmember Swegles suggested another amendment. As a speaker stated, it'd be a great incentive to set up a monetary reward when the carts come back.

Christopher Moylan believes the fines against the business will provide the incentive for the business to create an incentive for returning the carts. It'll suddenly become worth the businesses' while to pay the one-time cost for the apparatus to accept the dollar coin. Secondly, part of the blame lies with the businesses.

Mayor Spitaleri wants balanced responsibility. He stated an analogy that when the person leaves the bar drunk, both the customer and the bar has to pay part of the penalty since responsibility lies with both of them. His concern is, it should it go back to staff and we should go back to the attorney and make it a balanced responsibility somehow. We ought to get the community involved on this as well. It's the person who gets the cart dropped on their lawn who's unhappy. His concern is that if we start looking at having another business

service solve this problem, then two years down the line we'll wind up generating the start of yet another service to get involved and help solve those problems as well. There's not a lot of cooperative effort in this document, should act like Proposition 8. If Council puts a mandate on a business, then we should pay for it.

VOTE: 6-1 (Mayor Spitaleri dissented)

Councilmember Lee questioned how other jurisdictions handle this shopping cart issue, and Mayor Spitaleri suggests Councilmember Lee co-sponsor the item.

City Clerk Borkowski stated an ordinance of the City Council of the City of Sunnyvale adds Chapter 9.30 adding shopping carts.

Vice Mayor Hamilton had an agenda item from the previous week relating to BMR requirements – having BMR units available. There was also a question about City workers and whether or not an employee was someone defined as someone who worked for a Sunnyvale business or owned a Sunnyvale business. She requested clarification.

Councilmember Moylan stated the intent of that motion was for someone who actually, physically worked here during the day. There was a transportation argument made at that time. The idea is, if we actually locate the people who come here to work, maybe that mitigates some of our transportation concerns. If you have a business and you live in Auburn, like Early Horizons Childcare, they would not be eligible because they do not physically come to work here. But the intent was it is only people who come here to work in Sunnyvale.

Vice Mayor Hamilton stated she'd like to have that clarified in case we need to have an administrative clarification.

ADJOURNMENT

Mayor Spitaleri adjourned the Council meeting to the Redevelopment Agency at 11 p.m.

Katherine Bradshaw Chappelear
Interim City Clerk

Date